

FINAL AWARD ALLOWING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge
by Supplemental Opinion)

Injury No.: 05-089725

Employee: James Andrews
Employer: City of Glendale
Insurer: St. Louis Area Insurance Trust
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence, read the briefs, heard oral arguments, and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated October 16, 2008, as supplemented herein.

The administrative law judge concluded that employee failed to meet his burden of proof on his claim that he sustained an occupational disease arising out of and in the course of his employment. Thus, the administrative law judge denied employee's claim that he be awarded future medical treatment, permanent total or permanent partial disability benefits, and a dependency determination. We agree with this conclusion. We offer this supplemental opinion to address issues raised by employee in his briefs and at oral argument.

Employee argued in his briefs and at oral argument that the administrative law judge improperly held employee to a higher standard of proof for medical causation than the proper standard of "reasonable medical probability." Employee cited the administrative law judge's reliance on the opinions of Drs. Cantrell and Stahle, which stated that employee's back problems were the result of a pre-existing degenerative condition, as proof that she used an elevated standard. Specifically, employee argued that the administrative law judge erred in concluding that because employee's back problems were the result of a pre-existing degenerative condition, employee's career as a firefighter could not have been "a substantial factor" in causing or progressing said condition. In sum, employee argued that by failing to consider the effects of employee's career as a firefighter on his degenerative condition, the administrative law judge held employee to a higher standard in that she required employee to prove that his career as a firefighter was "*the* substantial factor" instead of "a substantial factor" in causing his back problems.

At oral argument, employee argued that a recent case, *Vickers v. Missouri Department of Public Safety*, WD69233, 2009 Mo. App. LEXIS 574 (Mo. App. 2009), provided the proper medical causation standard used in Missouri for occupational diseases. In *Vickers*, the court held that "[a] claimant must submit medical

evidence establishing a *probability* that working conditions caused the disease, although they need not be the sole cause. *Id.* at *11 (citations omitted). The court later stated “a single medical expert’s opinion may be competent and substantial evidence in support of an award of benefits, even where the causes of the occupational disease are indeterminate.” *Id.* at *20 (citations omitted).

Employee argued that because he submitted medical evidence and testimony from Dr. Lichtenfeld supporting the proposition that employee’s twenty-six years of working as a firefighter was a substantial factor in causing his back problems, he met his burden in establishing that it was “reasonably probable” that his career as a firefighter caused or exacerbated his current back problems.

Although employee’s argument is based upon proper legal principles, it fails to consider the distinctions between the claims in *Vickers* and the current case. First of all, the claimant in *Vickers* claimed she contracted clostridium difficile (C diff), a contagious bacterium, through a fecal-oral route in the course of her employment as a laundry cleaner for a veteran’s home. *Id.* at *1-3, *15. The chances of being exposed to and contracting such a bacterium are much more limited than the chances to develop back problems. To contract C diff, a person must ingest fecal matter orally. On the other hand, there are countless many ways back problems can develop. Therefore, the evidence in *Vickers* showing that the patients whose soiled laundry she handled were infected with C diff carries substantially more weight than employee’s evidence that he had sustained minor traumas to his back; especially when it was well documented that employee had suffered from back problems dating back to as early as 1992.

Another distinction between *Vickers* and the current case is that the administrative law judge in *Vickers* substantiated his decision to discredit the claimant’s medical expert testimony with erroneous information regarding the proximity of claimant’s exposure to the bacterium. *Id.* at *17-18. That was one of the primary reasons for the court’s reversal of the administrative law judge’s decision. In the current case, there is no such evidence that the administrative law judge based her opinion that Dr. Lichtenfeld was incredible upon erroneous information. After comprehensively reviewing all of the evidence and upon her observations at hearing, the administrative law judge, in the current case, determined that Dr. Cantrell’s opinion, that employee’s back problems were not caused by his career as a firefighter, was more credible than Dr. Lichtenfeld’s opinion.

If Dr. Lichtenfeld were found to be a credible medical expert, employee is correct in arguing that his opinion alone would be sufficient to support an award of benefits. However, neither the administrative law judge nor the Commission finds Dr. Lichtenfeld’s opinions or testimony credible. Therefore, employee has failed to provide substantial and competent evidence to support his claim that employee’s career as a firefighter was “a substantial factor” in causing or exacerbating his current back problems.

For the foregoing reasons, the Commission agrees with the conclusion reached by the administrative law judge that employee failed to meet his burden of proof on his claim that he sustained an occupational disease arising out of and in the course of his employment. Thus, employee’s claim that he be awarded future medical treatment, permanent total or permanent partial disability benefits, and a dependency determination, is denied.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued October 16, 2008, is affirmed, and is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 24th day of June 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

DISSENTING OPINION FILED
John J. Hickey, Member

Attest:

Secretary

DISSENTING OPINION

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be reversed. I dissent from the majority's decision to deny benefits.

In my opinion the administrative law judge erred in determining that employee failed to meet his burden of proof with regard to his claim that he sustained an occupational disease arising out of and in the course and scope of his employment. To prevail on a theory of occupational disease, an "employee must provide substantial and competent evidence that he has contracted an occupationally induced disease rather than an ordinary disease of life." *Kelley v. Banta & Stude Constr. Co., Inc.*, 1 S.W.3d 43, 48 (Mo. App. 1999) (citations omitted). This requires a showing that the employee's work creates exposure to the disease greater than or different from that which affects the public generally; and there is a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort. *Id.*

The court in *Jacobs v. City of Jefferson*, 991 S.W.2d 693 (Mo. App. 1999), provided more guidance as to what constitutes the "substantial and competent evidence" needed to meet the aforementioned burden. In *Jacobs*, the court stated that an employee only has to "submit medical evidence establishing a *probability* that working conditions caused the disease, although they need not be the sole cause." *Jacobs v. City of Jefferson*, 991 S.W.2d 693, 698 (Mo. App. 1999).

Employee submitted numerous medical records and testimony documenting his various work-related back injuries and aggravations, yet the administrative law judge found that each incident was an isolated occurrence that had no permanent effect on employee's degenerative condition. The administrative law judge's award appears to indicate that any claimant that has a pre-existing degenerative back condition is precluded from being awarded benefits for a work-related occupational disease that progresses and/or accelerates solely because the condition was pre-existing. This reasoning is illogical because it fails to account for the effects physically demanding jobs have on degenerative conditions.

The administrative law judge found Dr. Lichtenfeld's opinions to be incredible. However, Dr. Lichtenfeld is the only medical expert that recognized that the "type of work [employee] did certainly is extremely more consistent with causing [a] progression and acceleration [of his degenerative condition] than anything he would have done off the job." Dr. Lichtenfeld did not take an outrageous position and state that employee's work was the only cause of employee's back condition, but instead logically concluded that employee's minor traumas suffered at work, such as when he had symptoms from sliding down the fire pole, from falling, from cleaning the equipment, and from cutting with a chain saw, were a substantial factor in developing his current back problems.

Further, the administrative law judge and the majority give substantial weight to Dr. Cantrell's opinion that employee did not sustain an occupational disease even though Dr. Cantrell's report only considers two isolated incidents occurring in March and August of 2005. Employee was exposed to the hazards associated with being a firefighter for twenty-six years. During that time he sustained multiple traumas and daily stress on his back. Employee did not argue that the two exacerbating incidents in March and August of 2005 caused all of his current back complaints, but that the combined effect of his pre-existing degenerative condition and the daily toll taken on his back over the course of twenty-six years as a firefighter has caused his current back condition. It is nonsensical to conclude that employee's degenerative condition was not even exacerbated by his employment.

In my opinion, employee clearly met his burden of establishing that his current back problems are in part due to an occupational disease he developed over the course of twenty-six years of working as a firefighter for the City of Glendale and were not entirely an ordinary disease of life. Dr. Lichtenfeld provided "substantial and competent evidence," through his report and testimony, that employee's job was much more likely to have caused an acceleration or progression of his degenerative condition than anything he would have done off the job. Therefore, Dr. Lichtenfeld's opinions support employee's arguments that his work created an exposure to the disease (back problems) greater than or different from that which affects the public generally; and that there was a recognizable link between employee's back problems and the types of duties involved with his job as a firefighter. Dr. Lichtenfeld's opinions easily established a *probability* that employee's working conditions caused the disease.

Furthermore, this is a case in which there is conflicting medical evidence. In workers' compensation cases, "[a]ny doubt as to the right of an employee to compensation should be resolved in favor of the injured employee." *Wolfgeher v. Wagner Cartage Service, Inc.*, 646 S.W.2d 781, 783 (Mo. 1983). Therefore, the administrative law judge should have found Dr. Lichtenfeld credible and determined that employee submitted sufficient medical evidence to establish that his working conditions were "a substantial factor" in causing his back problems.

Based on the above, I believe that employee has carried his burden in proving that he sustained an occupational disease arising out of and in the course of his employment. Further, I find that employee should be awarded future medical benefits, permanent total disability benefits, and a dependency determination.

I would reverse the award of the administrative law judge denying compensation for employee's back condition.

For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission.

John J. Hickey, Member

AWARD

Employee: James Andrews

Injury No.: 05-089725

Dependents: N/A

Before the
Division of Workers'

Employer: City of Glendale

Compensation

Department of Labor and Industrial
Relations of

Additional Party: Second Injury Fund

Missouri

Jefferson City, Missouri

Insurer: St. Louis Area Insurance Trust

Hearing Date: July 30, 2008

Checked by: MDL

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: Alleged August 13, 2005
5. State location where accident occurred or occupational disease was contracted: St. Louis County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? N/A
8. Did accident or occupational disease arise out of and in the course of the employment? No
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee alleged occupational disease from heavy repetitive work activities over a period of years
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to date for temporary disability: \$7,588.05
16. Value necessary medical aid paid to date by employer/insurer? \$12,182.12

Employee: City of Glendale

Injury No: 05-089725

17. Value necessary medical aid not furnished by employer/insurer? 0
18. Employee's average weekly wages: unknown
19. Weekly compensation rate: \$696.97/\$365.08
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable: None
22. Second Injury Fund liability: No
- Total: 0
23. Future requirements awarded: None

Said payments to begin and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

FINDINGS OF FACT and RULINGS OF LAW:

Employee: James Andrews

Injury No.: 05-089725

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: City of Glendale

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: St. Louis Area Insurance Trust

Checked by: MDL

PRELIMINARIES

A hearing was held on July 30, 2008 at the Division of Workers' Compensation in the City of St. Louis. This case was consolidated for hearing with Injury No. 04-025439, which is the subject of a separate award. James Andrews ("Claimant") was represented by Mr. Dean Christianson. City of Glendale ("Employer") and its Insurer St. Louis Area Insurance Trust were represented by Mr. Mark Bates. The Second Injury Fund ("SIF") was represented by Assistant Attorney General Kareitha Osborne. Mr. Christianson requested a fee of 25% of Claimant's award.

The parties stipulated that on or about August 13, 2005, Claimant was earning an average weekly wage

sufficient to entitle him to the maximum rates of compensation of \$696.97 for Temporary Total Disability (“TTD”) benefits, and \$365.08 for Permanent Partial Disability (“PPD”) benefits. Employer paid TTD benefits of \$7,588.05 for 15 weeks from August 15, 2005 until November 27, 2005. Employer also paid medical benefits of \$12,182.12. Employment, venue, notice and timeliness of the claim are not at issue.

The issues for resolution by hearing are: whether Claimant sustained an occupational disease arising out of and in the course and scope of employment on or about August 13, 2005; liability of Employer to provide future medical treatment; nature and extent of permanent partial disability sustained by Claimant; whether Claimant is permanently and totally disabled; liability of the SIF; and dependency.

SUMMARY OF EVIDENCE

Claimant is a 51 year old man who has been married to Kathleen Andrews for 27 years. He has three children: Christopher, who is 33, Joshua, who is 26, and Brianna, who is 25. At the time of Claimant’s accident, he was living with his wife, and his daughter Brianna, who was in college at the time, and dependent upon him for support. None of his children are disabled. When Claimant was working, he used his paycheck for the benefit of his wife and children. Claimant’s wife Kathleen works outside the home as an RN, and she uses her paycheck for the support of her family.

Claimant was in the US Air Force from 1975 to 1979, and was honorably discharged. While in the military Claimant attended technical school and became a firefighter. Claimant obtained his GED in 1975, and graduated from Forest Park Community College in 1987 with an Associates Degree in Applied Science for Fire Technology. Claimant worked in the Fire Safety business inspecting and installing fire extinguishers and fire safety equipment. Claimant can use a key board, but is not a fluent typist.

Claimant went to work for Employer in 1980, and worked there continuously until he retired in April 2006. Claimant testified he stopped working in April 2006 because of all of his injuries and the resultant back and neck pain.

Claimant worked as a firefighter, which is a very physical job. When fighting fires, Claimant wore full gear while often crawling and holding an axe in his hands. The gear is heavy, and consists of boots, pants with suspenders, overcoats, helmets, and face masks which are hooked up to air bottles. They weigh about 75 pounds. When not fighting fires, the job entails training, often with full gear on, and dragging hoses with water in them. It also involves cleaning buildings, performing fire and hydrant inspections, and cleaning equipment.

PREEXISTING MEDICAL TREATMENT

Claimant first injured his low back in 1992 when he was taking a bath, and moved the wrong way in the bathtub. He was in severe pain, and sought medical treatment. In 1992, Claimant underwent a right L4-5 subtotal laminotomy foraminotomy for L5 nerve root decompression. The post-operative diagnosis was right L5 radiculopathy, lateral recessed stenosis L4-L5 level. Following his 1992 back surgery, Claimant was able to return to work as a firefighter, although he continued to have back pain.

In 1999, Claimant saw Dr. Stahle for several months for neck and back complaints arising out of a work accident. Claimant was in full gear, and tripped over a curb. After a short course of medication and physical therapy, Claimant returned to full duty.

Claimant saw Dr. Rickmeyer in October 2000 with complaints of back pain. Dr. Rickmeyer diagnosed low back pain status post laminectomy, and prescribed several medications.

Claimant returned to Dr. Stahle in December 2000 after injuring his back while on a ladder. Dr. Stahle diagnosed back pain, and ordered an MRI, which revealed postoperative and degenerative changes with mild disc space abnormalities at several levels. There was minimal disc bulging at L3-4 with no stenosis identified. At L4-5 and L5-S1 there was mild diffuse disc bulge with associated enhancing scar tissue and no stenosis identified.

Dr. Stahle thought Claimant had degenerative disk problems, and felt Claimant had an acute flare-up of preexisting problems. Dr. Stahle did not find his problems to be related to his October, 1999 injury, but rather were related to his 1992 back injury. Dr. Stahle stated "he (Claimant) will have back trouble, but most of it is pre-existing and arthritic in nature." Dr. Stahle prescribed medications and physical therapy in an effort to calm his acute process down back to his baseline, and returned Claimant to full duty. In January, 2001 Dr. Stahle found Claimant to be back at baseline.

In 2002, Claimant injured his right shoulder which ultimately led to surgery in 2003. Claimant underwent a right shoulder arthroscopy, with debridement of labral and rotator cuff fraying, a subacromial decompression, and distal clavicle excision. The post operative diagnosis was right shoulder pain, secondary to subacromial impingement, symptomatic acromioclavicular joint degenerative arthritis. Following his surgery Claimant was released to full duty.

On March 11, 2004, Claimant was working as a captain, and was called to the scene of a house fire. Claimant was in the back of the house, and fell into a fish pond while wearing his full gear. After a struggle, he was able to get out of the pond, and felt immediate pain in his back. The treatment for the March 11, 2004 accident is described in detail in the Award for Injury No. 04-125439. Claimant sustained PPD of 12.5% of the body as a whole as a result of this accident.

On March 20, 2005 Claimant responded to St. John's Mercy Medical Center after sliding down a fire pole with full gear on and experiencing pain in his left neck and shoulder, and left finger tingling and numbness. He was diagnosed with a pinched nerve and was prescribed Valium, Vicodin and Ibuprofen.

Claimant was referred to Dr. Chabot on March 23, 2005. In addition to his neck and left upper extremity pain complaints, Claimant complained of lower lumbar back aches and pains that wax and wane in severity. He reported his neck symptoms were new, but his back symptoms were intermittent and aggravated by more vigorous activity. He denied radiation of symptoms into his lower extremities. Dr. Chabot diagnosed back strain, neck pain and back pain. Dr. Chabot found Claimant's physical examination was devoid of significant functional deficits that would restrict him from performing his work duties. Dr. Chabot recommended Claimant continue with conservative measures including a Medrol dosepack, Naprosyn and physical therapy. On April 13, 2005 Dr. Chabot found Claimant to be at MMI. His impression was resolving neck and back pain. He found no PPD associated with Claimant's March 2005 injury.

AUGUST 13, 2005 INJURY

Claimant filed a claim for occupational disease leading up to August 13, 2005 due to the heavy and repetitive nature of his work as a firefighter. On August 8, 2005, Claimant saw Dr. Chabot with multiple complaints in varied locations. He reported that sometime in July 2005, he was performing maintenance on one of the fire trucks when he developed shoulder and neck pain and stiffness. He complained of pain involving the left elbow at times and pain at the base of both thumbs. He also complained of lower back pain with some radiation into the right hip. Dr. Chabot recommended physical therapy and a Medrol dosepack. He returned Claimant to limited duty with no lifting more than 25-30 pounds for two weeks, then regular duties thereafter.

A lumbar MRI revealed bilateral L5-S1 and L4-5 foraminal stenoses due to a combination of short pedicles, annular disc bulge and facet arthropathy with foraminal height loss at L5-S1. No high grade central canal stenosis was seen. A cervical MRI revealed 2 mm right paracentral C5-7 and minimal posterior C5-6 and C4-5 disc bulges each resulting in minimal dural displacement but no significant central canal or foraminal stenosis.

On September 7, 2005, Claimant saw Dr. Chabot complaining of increased low back pain radiating into the right lower extremity to the right big toe. He reported occasionally experiencing a jolting pain involving the right foot. His shoulder complaints had improved somewhat although he complained of persisting muscle spasm involving the posterior shoulder region. Dr. Chabot's impressions were shoulder bursitis/tendonitis, shoulder and back pain, and sciatica. He injected Claimant's right shoulder, continued him on physical therapy and limited duty, and prescribed

Ultracet.

On September 26, 2005 Dr. Chabot reevaluated Claimant, who complained that lifting boxes during physical therapy caused his neck, shoulder and back pain symptoms to flare up. Dr. Chabot diagnosed neck, back and shoulder pain and shoulder tendonitis. He recommended an MRI of the right shoulder to rule out a rotator cuff tear. He continued Claimant on limited duty with no lifting over 25 to 30 pounds, and continued his medications and physical therapy.

An MRI of Claimant's right shoulder did not reveal a rotator cuff tear. At an office visit on October 6, 2005, Dr. Chabot diagnosed neck, back, and shoulder pain. He stated: "The patient's subjective complaints are not necessarily corroborated by his physical examination. He lacks significant objective physical findings that would corroborate with his perceived level of functional disability." He returned Claimant to limited duties with no lifting more than 40 pounds and limited overhead activities. He continued Claimant on Ultracet for pain control, and physical therapy and referred him to a physiatrist.

On October 24, 2005, Claimant saw Dr. Cantrell, a physiatrist. Upon physical examination Claimant had active range of motion of his cervical spine that was within normal limits in flexion, extension, bilateral side bending and bilateral rotation with no reported pain complaints. Active range of motion of both shoulders was limited to 160 degrees of forward flexion with complaints of pain only in the right shoulder at the end range of forward flexion. Abduction was limited to 120 degrees bilaterally with complaints only in the right shoulder at the superior lateral aspect.

Dr. Cantrell stated: Mr. Andrews presents at this time with various subjective complaints that in my opinion do not appear to be substantially caused by work injuries occurring in March and August of 2005." "Clinical examination in my opinion is not consistent with that of a lumbosacral radiculopathy with the exception of slight strength deficits in right great toe extension and right knee flexion." Dr. Cantrell recommended electrodiagnostic tests of his right lower extremities. He also recommended a change in physical therapists for the two weeks preceding his electrodiagnostic tests. Dr. Cantrell stated if the electrodiagnostic tests were unremarkable, then he would consider Claimant to be at MMI, and capable of resuming his normal work activities. He also stated if they were abnormal and support a lumbosacral radiculopathy, he would consider the work injury from August 5, 2005 to simply be an exacerbating factor, and not a substantial causative factor in his condition, as there appears to be evidence dating back to 2003 of complaints consistent with a radiculopathy in the right lower extremity.

Dr. Cantrell stated in his opinion Claimant had reached MMI regarding his March 2005 injury, and did not sustain any PPD as a result of that injury. In his opinion, his bulging discs in his lumbar spine are degenerative in nature, and not causally related to his work injuries either in March or August of 2005.

A motor nerve conduction study conducted study performed on November 14, 2005 suggested a resolved right L5 radiculopathy without any evidence of an ongoing, active radiculopathy. There was no evidence of polyneuropathy or entrapment neuropathy. Dr. Cantrell stated Claimant could resume his regular duty activities as of November 28, 2005, and found him to be at MMI on December 19, 2005.

Claimant continued to see Dr. Rickmeyer from April to July of 2006. He continued to follow up with Dr. Rickmeyer for his back pain. Dr. Rickmeyer referred Claimant to Dr. Margarita, a physiatrist. Claimant saw Dr. Rickmeyer on July 14, 2006 for low back, as well as right shoulder and thumb pain. Claimant had recently undergone a functional capacity evaluation, and told Dr. Rickmeyer it took him about one month to get over the pain after going through the evaluation. Dr. Rickmeyer stated: "At this point I do not believe that he can perform full duty as a fireman, but by the same token, I see that Jim thinks that he is more disabled than he really appears. This is confirmed by the FCE which showed three failed validity criteria indicating high perceived disability and a relatively high number of subjective complaints relating to his current injury. His responses on the inappropriate symptoms questionnaire may indicate emotional distress expressed through illness behavior." Dr. Rickmeyer's assessment was low back pain.

Dr. Mark Lichtenfeld testified on behalf of Claimant. Dr. Lichtenfeld examined Claimant on September 10,

2007. Dr. Lichtenfeld diagnosed the following conditions as a result of the work accident of March 11, 2004: chronic lumbosacral spine strain; chronic cervical spine strain; incitation, exacerbation, and acceleration of preexisting degenerative changes in the lumbar spine; lumbar spine radicular pain; left lateral disc bulging at L4-5 extending into the inferior left neuroforamen; and mild bilateral neural foraminal narrowing at L4-5 and L5-S1. Dr. Lichtenfeld testified Claimant sustained PPD of 7.5% of the body as a whole referable to the cervical spine; and 12.5% of the body as a whole referable to the lumbosacral spine; which combine to form an overall disability that is greater than the simple sum of the disabilities combined.

With regard to Claimant's alleged injury that culminated on or about August 13, 2005, Dr. Lichtenfeld diagnosed the following conditions: Disc bulge at C4-5 and C5-6; right paracentral disc protrusion at C6-7; right C7 radiculopathy; chronic lumbosacral spine strain; incitation, exacerbation, and acceleration of preexisting degenerative change in the lumbar spine; herniated nucleus pulposus at L5-S1; moderate bilateral neuroforaminal stenosis at L5-S1; right S1 radiculopathy; and right shoulder bursitis. Dr. Lichtenfeld testified Claimant's workplace trauma that culminated on August 13, 2005 was the substantial factor in causing these diagnoses. Dr. Lichtenfeld testified as a result of the work injury of August 13, 2005 Claimant sustained PPD of 25% of the body as a whole referable to the cervical spine, 30% of the body as a whole at the lumbar spine; and 12.5% of the right shoulder. Dr. Lichtenfeld testified these three disabilities combine to form an overall disability that is greater than the simple sum of the disabilities combined, and a loading factor of 15% should be applied.

Dr. Lichtenfeld testified Claimant has the following preexisting medical conditions and disabilities: 15% PPD of the body as a whole due to benign prostatic hypertrophy; 35% PPD of the right shoulder due to his prior right shoulder injury and surgery; 20% PPD of the body as a whole as a result of his prior back injuries which includes Claimant's March 11, 2004 work injury as well as disability caused by his prior injuries before that time; 7.5% PDD of the body as whole due to his cervical spine injury on March 11, 2004, but no additional preexisting disability for his prior neck injuries before March 11, 2004; and 15% PPD of the body as a whole due to his tinnitus. Dr. Lichtenfeld testified Claimant's entire preexisting disabilities combine with one another, as well as with the disabilities caused by the injury that culminated at this workplace on August 13, 2005, to form an overall disability that is greater than the simple sum of the disabilities combined. In addition, he testified they create a hindrance to Claimant obtaining employment and/or reemployment.

Dr. Lichtenfeld testified Claimant would need ongoing medical treatment as a result of the August, 2005 injury. He felt Claimant would need anti-inflammatory medication and muscle relaxants, as well as narcotics. He stated consideration should be given to other treatments that might mitigate the need for strong narcotic medications such as cervical and lumbar traction, myelogram and post myelogram CT scans to determine if Claimant would be amenable to surgical treatment. He felt Claimant might need a dorsal column stimulator, and felt Claimant's home should be assessed by a physical and occupational therapist so they could provide Claimant with assistive devices for toileting, showering, bathing, as well as a grasper for use in his kitchen.

Dr. Lichtenfeld testified Claimant should have the following restrictions: avoid sitting, standing or walking for more than 20 or 30 minutes at a time without alternating between the two positions; avoid lifting more than 15 to 20 pounds on a one time basis and 8 to 10 pounds on a repetitive basis; lifting should only be performed between the waist and shoulder height; no lifting from the ground level to the waist level nor from the shoulder level overhead; avoid bending, twisting, and stooping; avoid walking on uneven and slick surfaces; avoid rapid pivoting; avoid driving a personal and commercial vehicle; and avoid climbing stairs, ladders and inclines.

Dr. Lichtenfeld opined taking into consideration Claimant's educational background and vocational history, as well as his preexisting disabilities that predated his August 13, 2005 cumulative trauma work injury, in combination with the disabilities caused by his cumulative trauma work injury of August 13, 2005, Claimant is totally and permanently disabled, and unable to compete in the open labor market. He testified due to the fact Claimant's pain is so severe in nature that it requires narcotic pain medication, it would interfere with his ability to become gainfully employed on a full time, let alone part time basis, due to the effect on his mental status.

Mr. Timothy Lalk, a vocational rehabilitation counselor, testified on behalf of Claimant. Mr. Lalk met with Claimant on January 4, 2008, and prepared a vocational report. Mr. Lalk testified Claimant could work within the

restrictions set by Dr. Lichtenfeld if his symptoms were controlled, but based on Claimant's self-reported limitations and symptoms he could not maintain employment in the open labor market.

Dr. Michael Chabot, an orthopedic spine surgeon, testified on behalf of Employer. Dr. Chabot testified he evaluated Claimant on August 8, 2005 for a work injury that occurred in mid June 2005, when Claimant was performing maintenance on a fire truck when he developed shoulder and neck pain and stiffness. Dr. Chabot continued to treat Claimant, and on October 6, 2005 saw Claimant for the last time. He testified Claimant's subjective complaints were not corroborated by his physical examination. He found Claimant lacked significant objective physical findings that would corroborate with his perceived level of functional disability. He recommended Claimant return to work with limited work duties of no lifting more than 40 pounds with limited overhead activity. He testified he referred Claimant to a physiatrist.

Dr. Russell Cantrell, a board certified physical medicine and rehabilitation physician, testified on behalf of Employer. Dr. Cantrell examined Claimant on October 24, 2005. Dr. Cantrell testified the incident Claimant described which occurred in August, 2005 was not a substantial factor in the need for any further treatment, but was simply an exacerbating factor. Dr. Cantrell based his opinion on the absence of any acute abnormalities on the lumbar MRI study performed in May, 2004, the absence of any acute abnormalities on his clinical examination, and his history of prior lumbar back surgery, as well as his review of the medical records which revealed prior symptoms. Dr. Cantrell testified Claimant had reached maximum medical improvement regarding the March 2004 work injury, and did not sustain any PPD. Dr. Cantrell testified Claimant's bulging discs in his lumbar spine were degenerative in nature, and were not caused by either his March 2004 or August 2005 work injury. Dr. Cantrell testified he found Claimant to be at maximum medical improvement, and released him to regular duty on November 28, 2005. Dr. Cantrell testified Claimant did not suffer any PPD as a result of his injuries of March 11, 2004, March 20, 2005 or August 14, 2005.

FINDINGS OF FACT AND RULINGS OF LAW

Based upon my observations of Claimant at hearing, a comprehensive review of the evidence, and the application of Missouri law, I find:

Claimant did not meet his burden of proving he sustained an occupational disease arising out of and in the course and scope of employment on or about August 13, 2005 that caused any PPD. I find Dr. Cantrell's opinion persuasive. Dr. Cantrell's opinion is credible, and closely conforms to the medical evidence in this case. Dr. Cantrell testified Claimant's bulging discs were degenerative in nature, and not caused by either his March 2004 or August 2005 work injury. As early as December 2000, Dr. Stahle thought Claimant's degenerative back condition was related to his 1992 back injury. Dr. Stahle stated Claimant would have back trouble, but most of it is pre-existing, and arthritic in nature. Dr. Chabot's records and findings lend further support to the fact Claimant does not have an occupational disease.

I do not find the opinion of Dr. Lichtenfeld that Claimant sustained an occupational disease to be credible. Dr. Lichtenfeld's testimony was argumentative and evasive. Dr. Lichtenfeld testified as an advocate rather than an independent expert. Dr. Lichtenfeld is the only doctor who found Claimant sustained an occupational disease, and his opinion is quite simply not believable.

Because Claimant is not found to have sustained an occupational disease, the remaining issues of future medical treatment, PTD, PPD, liability of the SIF, and dependency are moot.

Date: _____

Made by: _____

MARGARET D. LANDOLT
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Jeffrey W. Buker
Director
Division of Workers' Compensation